IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-277

DOYON, LIMITED and
BERING STRAITS NATIVE CORPORATION,

Petitioners,

v.

BRISTOL BAY NATIVE CORPORATION; ARCTIC SLOPE REGIONAL CORPORATION; CALISTA CORPORATION; KONIAG INCORPORATED; NANA REGIONAL CORPORATION; SEALASKA CORPORATION; COOK INLET REGION, INCORPORATED; AHTNA, INCORPORATED; THIRTEENTH REGIONAL CORPORATION; CHUGACH NATIVES, INCORPORATED; ALEUT CORPORATION; CECIL D. ANDRUS, Secretary of the Interior; and W. MICHAEL BLUMENTHAL, Secretary of the Treasury,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ARTHUR LAZARUS, JR.
Suite 1000
600 New Hampshire Ave., N.W.
Washington, D.C. 20037

Attorney for Petitioners.

Of Counsel:

W. RICHARD WEST, JR.
WILLIAM H. TIMME

Washington, D.C. • THIEL PRESS • (202) 638-4521

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Section 6(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. §1605(c), provides in material part that, "[a] fter completion of the roll prepared pursuant to section 5, " all monies in the Alaska Native Fund shall be distributed among the thirteen Regional Corporations

organized pursuant to the Act ". . . *on the basis of the relative numbers of Natives enrolled in each region.*" (Emphasis added.) Petitioners have submitted, as a main reason for granting the writ of certiorari, that the Court of Appeals violated the plain meaning rule by holding that the Native residents of six villages located in the Doyon and Bering Straits regions, which elected to take title to their former reserves under section 19(b) of the Claims Act, need not be counted as enrolled Natives for purposes of making Fund distributions under section 6(c). Significantly, the Federal respondents, in opposition, twice concede that the section 19(b) reservation villagers still are Natives enrolled in petitioners' regions. Brief for the Federal Respondents in Opposition ("Fed. Op."), pp. 5, 6. In light of the clear language of section 6(c), that admission should be dispositive of the major statutory construction issue presented by the petition.[1]

I.

The Federal respondents seek to justify the lower court's departure from the literal meaning of section 6(c) primarily on the ground that counting the reservation villagers would give petitioners a slightly higher Fund distribution on a per shareholder basis than the remaining eleven Regional Corporations (Fed. Op. at 6), and "[o]ther provisions of the Act confirm the congressional intent to equalize the settlement benefits on a per Native basis." Fed. Op. at 9. The Government's reading of the

[1] The Secretary of the Interior's admission also should be dispositive of the abstruse argument by eleven Regional Corporations that whether the term "Natives enrolled in each region" includes reservation villagers is ambiguous. Brief in Opposition for Respondents Ahtna, Inc., etc. ("Corp. Op."), pp. 9-11.

Claims Act is manifestly incorrect. As the following examples will demonstrate, the land and cash entitlements of Native regions and villages vary materially under the Act, so each Native in fact receives a disproportionate share of the settlement benefits:

(1) Contrary to the Federal respondents' contention, the acreage that each Village Corporation is entitled to select is not "directly proportional to the village's Native population." Fed. Op. at 10. Section 14(a) of the Claims Act, which governs village land entitlements, contains a formula for graduated land allocations ranging in amount from 69,120 acres for a communtiy with a Native population of 25-99 to 161,280 acres for a community with a Native population over 600. Quite obviously, the larger a village is the smaller the acreage entitlement per enrolled Native.

(2) Under section 16 of the Claims Act, the seven Native villages in southeastern Alaska, regardless of size, are limited to ownership of only one township (23,040 acres) each.[2] Under section 14(h)(3), the Secretary of the Interior is authorized to "convey to the Natives residing in Sitka, Kenai, Juneau and Kodiak, if they incorporate under the laws of Alaska, the surface estate . . . in not more

[2] Respondents attempt to rationalize this deviation from the principle of equality by pointing to the language of section 16(c), which recites that the funds appropriated in satisfaction of the judgment in *Tlingit and Haida Indians v. United States*, 389 F.2d 778 (Ct.Cl. 1968), "are in lieu of the additional acreage conveyed to other villages." Fed. Op. at 11, note 4; Corp. Op. at 16, note 17. This manifestation of Congressional intent, however, explains only why the southeastern villages as a class received less land than other Native villages and does not explain how equality of Native benefits is achieved within the class when all seven southeastern villages receive an identical acreage allotment notwithstanding their widely divergent Native populations.

than 23,040 acres of land," again regardless of the size of their respective Native populations. No land allocations are made, on the other hand, to the cities of Fairanks and Anchorage, which possess a greater concentration of Native residents than any other community in the State.

(3) Again contrary to the Federal respondents' contention, the land benefits accorded Regional Corporations under section 12(c) of the Claims Act are not "divided in a manner which attempts to give each Native an equal share" (Fed. Op. at 10), but rather are divided in a manner quaranteed to accord each Native an unequal share of the settlement assets. In the first place, neither respondent Thirteenth Regional Corporation, formed by nonresidents of the State of Alaska, nor respondent Sealaska Corporation, the Regional Corporation for southeast Alaska, is permitted to make any regional land selections under section 12(c). Secondly, the complex land-loss formula for regional land entitlements adopted by Congress in section 12(c) provides, in general, that 16 million acres of land will be allocated among the eligible Regional Corporations on the basis of how much land subject to a claim of aboriginal title was being relinquished, respectively, by the Natives within each region, and not on the basis of each region's Native population. Finally—and as a perfect illustration of Congress' intent to effect a disproportionate distribution—only six Regional Corporations, including petitioner Doyon, Ltd., but not petitioner Bering Straits Native Corporation, actually qualify for section 12(c) land selections.

(4) With respect to financial benefits from the settlement, section 7(i) of the Claims Act provides that each Regional Corporation shall retain 30% of the revenues received from its timber resources and subsurface estate,

and that only 70% of such revenues need be divided among all the Regional Corporations, except respondent Thirteenth Regional Corporation which does not share. This feature of the Act clearly creates an economic bonus for the Native stockholders of resource-rich Regional Corporations, like respondent Sealaska Corporation (timber) and respondent Arctic Slope Regional Corporation (oil), who, on a per capita basis, will receive a far larger portion of resource revenues (cash) than the Native stockholders in other Regional Corporations.

(5) Lastly, Congress allowed certain Natives, most of whom became stockholders of respondent Sealaska Corporation, to keep their per capita shares in the judgment of $7,546,053.80 for the loss of aboriginal lands entered by the Court of Claims in *Tlingit and Haida Indians v. United States, supra,* without debit against distributions from the Alaska Native Fund. Respondents point out, of course, that this judgment money was treated under section 16(c) of the Claims Act as a substitute for additional land. *See* note 2, p. 3, *supra.* The salient fact remains, however, that Natives who participated in the *Tlingit and Haida* award will receive more cash for the settlement of aboriginal land claims in Alaska than any other Native group.

To summarize, therefore, the thesis of the Federal respondents that "equality per Native is the consistent goal" of Congress in the Claims Act (Fed. Op. at 11) cannot be sustained.[3] Necessarily, respondents' argument

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[3]The Federal respondents correctly cite subsections 7(g), (k) and (m) of the Claims Act as requiring equality among stockholders (Fed. Op. at 9-10), but these provisions relate exclusively to intra-corporate distributions. No provision of the Act mandates equality among the Regional Corporations, and such alleged equality is the sole issue in this case.

that the Court of Appeals properly ignored the plain language of section 6(c) in order to carry out that mythical "goal" also must fall.

II.

Respondent Regional Corporations seek to justify the lower court's departure from the plain meaning of section 6(c) largely by asserting that inclusion of the reservation villagers in the base for determining Fund distributions will give rise to a windfall for petitioners and that the lower court properly looked beyond the literal words of the statute in order to avoid an "absurd" or "highly incongruous" result. Corp. Op. at 5, 13-14. Respondents' premise is demonstrably inaccurate, and their conclusion thus clearly suspect.

Section 6(c) of the Claims Act directs that the Alaska Native Fund of $962.5 million be divided among thirteen Regional Corporations. Absent an election by any Native village under section 19(b) of the Act, petitioner Doyon's share of the Fund on the basis of September 30, 1976 population figures would be approximately $112.9 million, petitioner Bering Straits' share would be approximately $90.7 million and the respondent Regional Corporations' share would be the balance of $758.9 million.[4]

Six Village Corporations in the Doyon and Bering Straits regions in fact did elect to acquire title to their former reserves under section 19(b) of the Claims Act.

[4]Under section 7(j) of the Act, each Regional Corporation may retain up to 50% of all Fund distributions for its own account, but must pass along the remainder to village corporations and certain stockholders.

Petitioners do not own stock in such Village Corporations, did not participate in the village decisions and, indeed, lost their ownership rights in the subsurface of village lands under section 14(f) of the Act as a result thereof. Moreover, section 19(b) specifically spells out the consequences of an election to take title to a former reserve, which consequences do not include any change in the formula for calculating Fund distributions under section 6(c). Nonetheless, the respondent Regional Corporations contend, and the court below ruled, that the section 19(b) elections cost petitioners over $15 million in Fund distributions and provided respondents a windfall in a like amount.[5]

In short, the Court of Appeals in this case created an injustice; it did not remedy one.

III.

The Federal respondents assert that, because the section 19(b) villages had relinquished many general benefits under the Claims Act, "the Secretary reasoned that it would be inequitable" to permit petitioners to count the Native residents of such villages in determining regional shares of the Alaska Native Fund. Fed. Op. at 6. Petitioners suggest, on the other hand, that the Secretary has no authority to decide whether a statutory distribution

[5]Respondent Regional Corporations manipulate various dollar figures in an effort to show that, on a per shareholder basis, Doyon and Bering Straits would receive a disproportionately high share of the Fund if petitioners were to prevail. Corp. Op. at 5. The basic flaws in this analysis are: (1) that respondents erroneously assume equality in distributions to be a Congressional mandate; and (2) that section 6(c) provides for distributions to Regional Corporations, not to their stockholders.

scheme is equitable or inequitable, and then to substitute his view of what is fair for the words of Congress. The ruling of the Court of Appeals upholding so broad an exercise of Secretarial power certainly should be reviewed by this Court.

Respectfully submitted,

ARTHUR LAZARUS, JR.
Suite 1000
600 New Hampshire Ave., N.W.
Washington, D.C. 20037
(202) 342-3624

Attorney for Petitioners Doyon, Limited and Bering Straits Native Corporation.

Of Counsel:
W. RICHARD WEST, JR.
WILLIAM H. TIMME